

# SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Zettel Analyst: Marion Mann DeJong Bill Number: AB 110

Related Bills: See Prior Analysis Telephone: 845-6979 Amended Date: 05-21-2001

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Teacher Retention Credit/Disallowance of Credit by FTB

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

☒ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended May 2, 2001.

☒ FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED May 2, 2001, STILL APPLIES.

OTHER - See comments below.

## SUMMARY

This bill would expressly prevent the Franchise Tax Board (FTB) from penalizing a taxpayer for incorrectly claiming the teacher retention credit on the 2000 tax return, except in cases of fraud.

## SUMMARY OF AMENDMENT

The May 21, 2001, amendments changed the operative date of the bill so that it would apply only to taxable year 2000. According to the author's staff, the bill will be further amended to resolve the department's implementation concerns. Please see "Implementation Concerns" below.

Except for the "Effective/Operative Date" discussion, the department's analysis of the bill as amended May 2, 2001, still applies. A revised "Effective/Operative Date" discussion is provided below. In addition, the "Position," "This Bill," "Implementation Concerns," and "Arguments/Policy Concerns" discussions from the department's prior analysis are provided below for convenience.

## EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would become effective immediately upon enactment. However, the bill specifies that its provisions regarding fines and penalties would apply only for the taxable year beginning on or after January 1, 2000, and before January 1, 2001.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Legislative Director

Date

Brian Putler

06/12/01

## **POSITION**

Pending.

## **THIS BILL**

In the event that FTB determines that a taxpayer is ineligible for the teacher retention credit for the 2000 taxable year, this bill would require the taxpayer's liability to be increased by the amount of the credit plus applicable interest. Except in the case of fraud, this bill would prevent FTB from assessing any fines or penalties if a taxpayer were ineligible for the teacher retention credit.

## **IMPLEMENTATION CONCERNS**

As written, the bill could be interpreted to prevent imposition of penalties unrelated to claiming the teacher retention credit (e.g. failure to file a return by the due date). In addition, the bill does not specify which process FTB should use when increasing the individual's tax liability when disallowing a credit. It could be done when processing the return, in which case there would be no protest rights. Or, it could be done through the deficiency assessment process, which includes protest and appeal rights. Department staff is working with the author to resolve these concerns. According to the author's staff, the author intended to prevent the imposition of the accuracy-related penalty that would be imposed during the audit process.

If the bill were amended as indicated by the author's staff, implementing this bill would not affect the department's programs and operations since it would not change department practice. Currently, if upon audit, the taxpayer were found to be ineligible for the teacher retention credit, department staff would issue a proposed assessment for the additional tax due (credit amount) plus interest. Except in the case of fraud, it is unlikely that FTB would assess any penalties on a taxpayer for incorrectly claiming the credit.

## **ARGUMENTS/POLICY CONCERNS**

Under current law and department practice, if a taxpayer were found to be ineligible for the teacher retention credit, department staff would issue a proposed assessment for the additional tax due plus interest. FTB would not assess any penalties if the taxpayer claimed the credit in good faith on a timely-filed, fully-paid return and provided information requested during the audit. Therefore, this bill does not appear to be necessary.

Moreover, prohibiting the imposition of penalties for taxpayers that claim the benefits of a particular tax provision for which they are ineligible is unprecedented. This bill would be the first precedent for prohibiting imposition of a penalty even if a taxpayer has no reasonable basis, short of fraud, to claim a credit initially.

## **LEGISLATIVE STAFF CONTACT**

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